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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,913	07/08/2003	Kanna Ueda	AA596M	7885

27752 7590 04/20/2006

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INTELLECTUAL PROPERTY DIVISION  
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CINCINNATI, OH 45224

EXAMINER
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PATEL, RITA RAMESH

ART UNIT	PAPER NUMBER
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1746

DATE MAILED: 04/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/614,913

Applicant(s)

UEDA ET AL.

Examiner

Rita R. Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Drawings*

The drawings received 07/08/03 are acceptable for examination purposes.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Brincat (US Patent No. 6,938,805).

Brincat teaches a refillable container adapted to facilitate the purchase and use of consumer products and the selective discharge thereof (Abstract). Brincat teaches that the bottles are refilled by unscrewing the top of the bottle or sprayer, just under the cap or sprayer, providing any of the following types of discharging mechanisms: sprayers, pumps, spout tips, flip tops, polly tops, push and pull caps (col. 6, lines 14-38). Moreover, Brincat states the discharge cap 102 may be of any type of discharge device (col. 2, lines 42-43); therefore, not limiting the type of discharging means and implicating

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any combinations thereof. As shown in Figure 6B, the upper body portion 106 illustrated by Brincat is removably attached to the hollow body member of the container; moreover, a refill cup 16 is secured to the bottom end 18 of the container which may be used for measuring and refilling products. Thus, the upper body portion 106 and refill cup 16 attached to the container 10 read on applicant's claims wherein the attachment portion removably attaches to the measuring implement and the applicator is in dispensing position when the hollow body member comprises therein the cleaning composition for dispensation.

Brincat teaches the container 10 is adapted for receipt of material such as a liquid therein, which may comprise soap, conditioners or other substances often used by consumers; it is noted that any of a wide variety of substances could be used (col.3, lines 9-15).

In Figures 2 and 3 Brincat illustrates a discharge assembly/cap 12 for attachment to the top 14 of the container (col.3, lines 17).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brincat as applied to claims above, and further in view of Davidson et al. (US Patent No. 5,108,009) herein referred to as "Davidson".

Brincat teaches the claimed invention, however, fails to teach a detergent container. Davidson teaches a package for storing and dispensing pourable contents which includes a container with a bottle having a neck with an opening with a measuring cap included thereon (Abstract). The packages may be used for storing, dispensing and measuring pourable contents such as liquid detergent or fine grained powders (col. 1, lines 12-14). Also, the refill cup 16 taught by Brincat above may equally be used as a measuring cup. It is well settled that the intended use of a claimed apparatus is not germane to the issue of the patentability of the claimed structure. If the prior art structure is capable of performing the claimed use then it meets the claim. *In re Casey*, 152 USPQ 235, 238 (CCPA 1967); *In re Otto*, 136 USPA 459 (CPA 1963). Therefore, it would be obvious to one of ordinary skill in the art to combine the detergent container taught by Davidson with the container 10 and refill cup 16 taught by Brincat, to form a kit and achieve convenience, usability and efficiency while using these product dissemination devices together or individually.

Brincat discloses the refill cup 16 is secured to the bottom of the container 10. In Figure 8C a screw type fitment is specifically shown by Brincat. Hence, upon attachment of the refill cup 16 to the bottom of the container 10, a seal 18 is formed (Fig. 2).

Brincat teaches a label 111 attached thereupon container 10 (col. 4, line 24); this label may be used for providing the user with an instruction set. It is well settled that the intended use of a claimed apparatus is not germane to the issue of the patentability of the claimed structure. If the prior art structure is capable of performing the claimed use then it meets the claim. *In re Casey*, 152 USPQ 235, 238 (CCPA 1967); *In re Otto*, 136 USPA 459 (CPA 1963).

In Figure 7 of Brincat, Brincat illustrates step 212 to be the removal of the upper body portion 106 of the refillable container 100 and the pouring in of the material for dispensing therefrom; step 214 illustrates the securement of the upper body portion 106 thereupon with the material contained therein; step 216 illustrates the discharge of the contents of the refillable vessel of the present invention (col. 4, lines 50-57). Additionally, as aforementioned, the container may be filled with a variety of substances, ergo, water may be used to fill the container. Hence, reading on applicant's method step of rinsing a surface with water to remove the cleaning composition—steps 212-216 may be repeated to refill it with cleaning composition or water.

### **Conclusion**

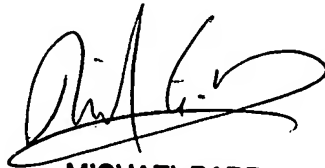
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rita R. Patel whose telephone number is (571) 272-8701. The examiner can normally be reached on M-F: 8-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on (571) 272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RRP

A handwritten signature in black ink, appearing to read 'Michael Barr', with a stylized flourish at the end.

**MICHAEL BARR**  
**SUPERVISORY PATENT EXAMINER**